

11-22-2016

## State v. Newberry Respondent's Brief Dckt. 43858

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 43858
Plaintiff-Respondent,	)	
	)	Twin Falls County Case No.
v.	)	CR-2014-7666
	)	
JAY WAYNE NEWBERRY,	)	
	)	RESPONDENT'S BRIEF
Defendant-Appellant.	)	
_____	)	

Issue

Has Newberry failed to establish that the district court erred by denying his motion for credit for time served?

Newberry Has Failed To Establish That The District Court Erred By Denying His Motion  
For Credit For Time Served

While Newberry was on probation for a 2009 Ada County felony DUI (“the Ada County case”), he committed, and subsequently pled guilty to, felony DUI in this (2014 Twin Falls County) case. (R., pp.15, 52-54, 114.) On November 24, 2014, the district court imposed a unified sentence of five years, with two years fixed, retained

jurisdiction, and ordered that the sentence in this case run consecutively to Newberry's sentence in the Ada County case. (R., pp.128-35.) On December 4, 2014, Newberry was served with a warrant in the Ada County case and was transported to the Ada County jail, after which he was found in violation of his probation in the Ada County case and that sentence was ordered executed. (R., pp.142, 164, 169; Order, Granting in Part and Denying in Part, Motion for Credit for Time Served, p.2 (Augmentation).) The district court subsequently entered an order relinquishing jurisdiction in this case. (R., pp.141-45.)

On November 9, 2015, Newberry filed a motion for credit for time served, requesting credit for time served from July 20, 2014 (the date he was booked into jail for the instant offense) through November 24, 2014 (the date judgment was entered); from December 4, 2014 through January 8, 2015 (the time he spent in the Ada County Jail after the warrant in the Ada County case was served); and from January 9, 2015 (the date Newberry was transferred to IDOC custody) through March 6, 2015 (the date the court entered its order relinquishing jurisdiction in this case). (R., pp.167-71; Order, Granting in Part and Denying in Part, Motion for Credit for Time Served (Augmentation).) On September 14, 2016, the district court entered an order granting Newberry 128 days of credit for time served prejudgment (July 20, 2014 to November 24, 2014) and 11 days of credit for time served between the entry of judgment and the date "a bond was set in the Ada County case" (November 24, 2014 to December 5, 201), for a total of 139 days of credit for time served. (Order, Granting in Part and Denying in Part, Motion for Credit for Time Served (Augmentation).) Because Newberry's sentences in this case and the Ada County case were ordered to run

consecutively, the district court noted that, as of December 5, 2014 (the date bond was set in the Ada County case), “credit for time served began to accumulate at that time only for the Ada County case. See Idaho Code § 18-308. Thus, credit for time served in the Twin Falls County case would resume upon completion of the sentence in the Ada County case.” (Order, Granting in Part and Denying in Part, Motion for Credit for Time Served, p.3, n.2 (citation original) (Augmentation).)

On November 20, 2015, Newberry filed a second motion for credit for time served, requesting that his credit for time served in this case and the Ada County case “run together, meaning that any time served in one case should be credited to the other case.” (R., pp.196-200; Order Denying Motion for Credit for Time Served, pp.1-2.) The district court entered an order denying the motion on July 12, 2016, concluding:

The Ada County case is a separate and distinct case from the Twin Falls County case. Furthermore, each case runs consecutive to the other. As such, the defendant will not be given credit in the Twin Falls County case for any time served in the Ada County case. See *State v. Vasquez*, 142 Idaho 67, 69, 122 P.3d 1167, 1169 (Ct. App. 2005) (the defendant was not entitled to credit on his Washington County sentences for time served in Payette County). The defendant will be given credit for time served in the Twin Falls County case for pre-trial confinement and post-disposition in the amount of 139 day(s). I.C. § 18-309.

(Order Denying Motion for Credit for Time Served, p.2 (citations original).) Newberry filed a notice of appeal timely from the district court’s orders denying his motions for additional credit for time served. (R., pp.271-74; 6/22/16 Order Suspending Briefing Schedule; 6/23/16 Amended Order Suspending Briefing Schedule.)

“Mindful that, because his sentences are consecutive, the court correctly calculated [his] credit for time served,” Newberry nevertheless asserts that the district court erred by denying his “motion for credit for the time between service of the Ada

County warrant and the order relinquishing jurisdiction.” (Appellant’s brief, pp.1, 4.) Newberry offers no argument in support of his claim. (Appellant’s brief, pp.4-6.) Newberry has failed to show error in the district court’s denial of his motion for additional credit for time served.

The right to credit for time served is conferred only if the prejudgment incarceration is a consequence of or attributable to the charge or conduct for which the sentence is imposed. I.C. § 18-309(1).

An entitlement to credit under I.C. § 18-309 depends upon the answer to a simple inquiry: was the defendant’s incarceration upon the offense for which he was sentenced? If a particular period of confinement served prior to the imposition of sentence is not attributable to the charge or conduct for which a sentence is to be imposed, the offender is not entitled to credit for such confinement; neither does the sentencing judge err by denying credit under such circumstances.

State v. Hale, 116 Idaho 763, 765, 779 P.2d 438, 440 (Ct. App. 1989) (citations omitted). When a person is sentenced to the custody of the board of correction, his term of confinement begins from the day of his sentence. I.C. § 20-209A. Pursuant to I.C. § 19-2603:

When the court finds that the defendant has violated the terms and conditions of probation, it may ... if judgment was originally pronounced but suspended, revoke probation. ... The defendant shall receive credit for time served from the date of service of a bench warrant issued by the court after a finding of probable cause to believe the defendant has violated a condition of probation ....

I.C. § 19-2603.

On appeal, Newberry acknowledges that the district court “correctly awarded [him] credit for 139 days between when he was arrested for this crime on July 20, 2014, and when he was served the Ada County warrant on December 4, 2014,” and that, “once he was served with the Ada County warrant,” he “began serving [his] two-year

fixed term in the Ada County case” and, at that point, he “was entitled to credit toward his sentence in the Ada County case.” (Appellant’s brief, pp.5-6.) He also acknowledges that, “because his sentences are consecutive, the court correctly calculated [his] credit for time served” in this case. (Appellant’s brief, p.1.) The district court did not err in refusing to give Newberry additional credit in this case for time he served – and for which he received credit – in relation to a separate, consecutive sentence imposed in the Ada County case. Therefore, Newberry has failed to establish error in the district court’s denial of his motion for credit for time served “for the time between service of the Ada County warrant and the order relinquishing jurisdiction.” (Appellant’s brief, p.4.)

#### Conclusion

The state respectfully requests this Court to affirm both the district court’s July 12, 2016 “Order Denying Motion for Credit for Time Served” and its September 14, 2016 “Order, Granting in Part and Denying in Part, Motion for Credit for Time Served.”

DATED this 22nd day of November, 2016.

/s/ Lori A. Fleming  
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Deputy Attorney General

VICTORIA RUTLEDGE  
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 22nd day of November, 2016, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

MAYA P. WALDRON  
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: [briefs@sapd.state.id.us](mailto:briefs@sapd.state.id.us).

/s/ Lori A. Fleming  
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Deputy Attorney General